

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Modern Rules of Procedure
for the Issuance of Advisory Opinions
in Nature of Service Proceedings

Docket No. RM2012-4

COMMENTS OF THE PUBLIC REPRESENTATIVE
IN RESPONSE TO ORDER NO. 1309

(June 18, 2012)

I. INTRODUCTION

Purpose. This document responds to the Commission's recent establishment, in Order No. 1309, of a rulemaking docket for comments on potential ways to improve and expedite the handling of "N-cases" consistent with due process.¹

II. ORDER NO. 1309's CONTEXT AND APPROACH

Context. An "N-case" involves a Postal Service request for an advisory opinion on a nationwide (or substantially nationwide) change in service. This type of case was initially authorized in section 3661(b) of the Postal Reorganization Act of 1970 (PRA). It was retained as part of the revised regulatory framework in the Postal Accountability and Enhancement Act (PAEA) of 2006.

¹ See Order No. 1309, Advance Notice of Proposed Rulemaking on Modern Rules of Procedure for Nature of Service Cases under 39 U.S.C. 3661, April 10, 2012 (Advance Notice). The Advance Notice appears at 77 FR 23177 (April 18, 2012).

Order No. 1309 makes clear that consideration of revisions that would foster issuance of timely and relevant advisory opinions does not arise in a vacuum. Instead, the Commission affirmatively notes that the three PAEA-era N-cases completed to date have required 5 months (for Docket No. N2011-1), 8 months (for Docket No. N2009-1) and 12 months (for Docket No. N2010-1). *Id.* at 3. It acknowledges that the Postal Service has expressed a need for a more expeditious hearing process, especially in light of its financial difficulties. *Id.* It refers to limited hearings at the Nuclear Regulatory Commission (NRC) for licensing purposes, citing a decision in *Citizens' Awareness Network v. U.S.* It also observes that a legislative proposal pending as of issuance of Order No. 1309 would impose a deadline of 90 days for issuance of advisory opinions, based on the date of the request was filed. *Id.* (referencing section 206 of S.1010, 112th Congress).

The "hard" deadline in the referenced legislation stands in contrast to the Commission's support, in its September 22, 2011 Section 701 Report, for retention of an open-ended period for consideration, subject to the Postal Service's ability to request expedited processing for a time-sensitive matter. Section 701 Report at 84. The Postal Service's response to the Commission's suggestion expresses a preference for the approach in the S. 1010. *Id.*, United States Postal Service Response to Commission's Draft Section 701 Report at 22.

"*Advance*" notice. The history of N-cases since Reorganization has been shaped, to different degrees, by several factors, including:

- (1) the definition of what constitutes a "nationwide or substantially nationwide change in service;"
- (2) the assumption that the APA requires trial-type hearings; and
- (3) the existence, in Commission rules, of a deadline for a Postal Service request, but the absence of a deadline for issuance of a Commission decision, coupled with varying ranges of time for completion of a case.

The second and third factors also shape this rulemaking.

Format. The Commission's request for comments takes the form of an Advance Notice of Proposed Rulemaking. In keeping with its conventional approach to this type of notice, the Commission does not present any specific revisions to the rules of practice governing N cases. Instead, it presents some background information and poses the following questions as a springboard for suggestions from commenters on:

- whether changes to current N-case procedures and regulations are warranted;
- if so, what those changes should be; and
- other relevant subjects.

Order No. 1309 at 1-2.

The Commission further encourages those who discuss new approaches to address “what procedural safeguards must be preserved to assure that meaningful public participation and the Commission's decisions are helpful to the Postal Service's decisionmaking process” *Id.* at 7.

Scope of comments. To assist in the development of the rulemaking record, this submission discusses the interests of the general public in N-cases. In brief, with respect to these interests, the advice that emerges from an N-case proceeding may be of limited utility if the Postal Service does not receive the opinion in a timely fashion. Thus, exploring ways to expedite the process is appropriate. At the same time, N-cases, by their very nature, have always posed significant hurdles to individuals, small interest groups, associations and others who wish to participate “in a meaningful way.” Thus, accelerating N-cases might pose the potential for exacerbating the situation, given the impact on factors such as the time an association may need to obtain approval to participate; the need to balance an interest in participation with other

priorities; concern about funding, including how participation might impact the balance sheet if expenditures are concentrated in a relatively short period; and obtaining qualified assistance.

On the other hand, some individuals, businesses, and groups or associations might find that a shorter process and/or new practices would be acceptable, especially if the revised process allowed them access to data and information at the heart of the proposal without the need for extended discovery requests.

III. THE INTERESTS OF THE GENERAL PUBLIC IN THIS RULEMAKING

The Commission's issuance of the Advance Notice serves the interests of the general public by signaling a willingness to take a fresh look at the N case process, while affirmatively recognizing that any proposed new procedures may require procedural safeguards "to assure meaningful public participation and the Commission's decisions are helpful to the Postal Service" Order No. 1309 at 7. More specifically, the interests of the general public in this rulemaking lie in balancing stakeholders' interests in N-cases so that agency rules and related internal practices foster development of a sound record in ways that allow the Commission to provide the Postal Service with expert advice as close as practicable to the intended implementation date of the proposed service change. In this formulation:

- "stakeholders" include not only the Postal Service, the Commission, and the general public, but affected mailers and the Congress;
- a "sound record" entails both accuracy and adequacy, but not perfection or exhaustion of all possible avenues of inquiry;
- "rules" cover both Subpart A and Subpart D, but the ability to adopt changes that would significantly expedite N-case processing turns on what is required under (1) section 3661's reference to "a hearing on the record under 556 and 557" or (2) what may be required or allowed under new legislation.

- “related internal practices” means things such as revisiting budget priorities, on a short- or long-term basis (if allocation of agency resources is found to materially affects the Commission’s ability to process a case) or refining the post-hearing internal review process (if such refinements would facilitate expedited issuance of advisory opinions).
- “as close as practicable” to the implementation date means issuance of an advisory opinion that is sufficiently timely and contemporaneous to allow the Postal Service an opportunity to consider the proffered advice and make adjustments, if appropriate.

IV. The Logic of the Commission's Original Implementing Rules

The original N case rules were part of an initial “agency start-up package.” In considering whether changes to N-case rules should be made, it is useful to consider how they were developed. Review of early dockets shows that shortly after its inception, the Commission issued rules of practice to address its major statutory responsibilities under the Postal Reorganization Act of 1970 (PRA). That effort — Docket No. RM71-1 — included a special set of five provisions for N case proceedings. These provisions were designated as §§ 3001.71 through 3001.75 and collectively organized as Subpart D of 39 CFR Part 3001.

The preamble to the original rule indicates that issuance of the Part 3001 regulations was spurred by a sense of urgency about postal finances and the expectation that the Postal Service would soon be filing the first omnibus rate case:

The Postal Reorganization Act, as well as the legislative history and matters developed in pertinent hearings before committees of the House and Senate, including presentations to the Congress by the Postal Service concerning revenue objectives and imminent proposals for postal rate increases, point to the urgency of the immediate promulgation of Part 3001.

36 FR 396 (January 12, 1971).

This may account for why Subpart D and the other components of Part 3001 were collectively issued as a final rule, effective upon publication, with minimal discussion and explanation.² It is relatively easy to see, however, that Subpart D was tailored to anticipated N case needs but, by design, was never intended to serve as a stand-alone apparatus for handling an advisory opinion request. Four of the five provisions were relatively spare, consisting of only one paragraph. The exception — rule 74 — consisted of several paragraphs dealing addressing the contents of requests for advisory opinions. Instead, rule 71 incorporated by reference the much more extensive rules of general applicability in Subpart A, including the “Definitions” section.³ Notably, one of the entries is for a “Hearing,” which was defined as follows in section 3001.5(j): “‘Hearing’ means a hearing under sections 556 and 557 of title 5, United States Code (80 Stat. 386), as provided by sections 3624,3661, and 3662 of the Act.

Another entry of interest is the definition of “Record” in rule 3001.5, which provides: ‘Record’ means the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, which constitutes the exclusive record for decision. This definition points to the assumption that “testimony,” one of the hallmarks of a trial-type proceeding, would be filed and will be part of the record in an N-case.

In addition, rules 72 and 75 referenced one or more specific Subpart A rules. The following table summarizes the inter-relationship between Subparts A and D.

² To facilitate access to this document, a pdf version of 36 FR 396 (January 12, 2012) is attached. Markings are as found in the original.

³ The Commission also employed the incorporation by reference drafting technique for three of the four other case-specific subparts adopted in Docket No. RM71-1. See § 3001.51 (rate and fee cases); §3001.61 (mail classification); and 3001.81 (formal rate and service complaints). The rulemaking provision (Section 3001.41) did not reference Subpart A, ostensibly because hearings are not a feature of rulemakings.

Table 1
Subpart D—
Rules Applicable to
Requests for Changes in the Nature of Postal Services
(Docket No. RM71-1)

Section	Caption	Subpart A Reference?	Referenced Provision	Presumptive Reason for Reference
3001.71	Applicability	Yes	<i>Subpart A (in its entirety)</i>	Drafting technique to avoid repetition
3001.72	Filing of formal requests	Yes	3001.9	Commission's address for filing, etc.
			3001.10	Form and number of copies
			3001.11	Contents of documents, including "post office address" for service
			3001.74	Contents of formal Postal Service advisory opinion requests
3001.73	Filing of prepared direct evidence	No	N.A.	N.A.
3001.74	Contents of formal requests	No	N.A.	N.A.
3001.75	Service by the Postal Service	Yes	3001.12	Details of service of documents

In terms of deadlines, rule 72 gave expression to the statute's reference to filing a request for an advisory opinion a "reasonable" time before the expected implementation date by requiring the submission to be made "not less than 90 days in advance" of the proposed effective date. It did not include a corollary requirement for issuance of a Commission decision within a time certain. However, given Subpart D's incorporation of Subpart A, this does not mean that N-cases could be conducted without any concern for time, as they were subject to rule 30's requirement that presiding officers: ". . . direct the order of presentation of evidence and issue such other

procedural orders as may be necessary to assure the orderly and *expeditious* conclusion of the hearing.” (Emphasis supplied.) So, despite the absence of a deadline for a decision, the original rules reflected an appreciation of the need for expedition, and the expectation that Commission proceedings, including N cases, would be guided by this principle.

Subpart D was later revised in relatively minor ways to mirror across-the-board changes in matters such as limited participation, service practices, and *Federal Register* publication requirements.⁴ None of these fundamentally changed the approach to N-case proceedings or to expedite them in any significant sense.

V. THE ROLE OF THE ADMINISTRATIVE PROCEDURE ACT (APA)

What goes unstated in the preamble is that Part 3001’s organization reflects an assumption that the wording of section 3661(b) requires N-cases to be conducted as trial-type proceedings. Specifically, section 3661(c) establishes the following precondition to Commission action on a request for an advisory opinion:

The Commission shall not issue its opinion on any proposal until an opportunity for ***hearing on the record under sections 556 and 557 of title 5*** has been accorded to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public.

(Emphasis supplied).

⁴ See, for example, PRC Order Promulgating Amendments to Rules of Practice and Procedure in Docket No. RM73-2 Limited Participation in Commission Proceedings by Persons Not Parties Docket No. RM73-2 (issued February 6, 1973) and Amendments to In Docket No. RM73-2, General Practice and Procedural Rules (Excluding Evidentiary and Filing Requirements), dated February 9, 1973 (Federal Register publication).

The highlighted phrase includes what is widely referred to in legal circles as “magic words” triggering formal adjudication under the APA, as opposed to simply a “hearing on the record” — which may be the language the Nuclear Regulatory Commission operates under for certain licensing procedures — and to the other APA-sanctioned type of federal agency action, which is “informal” rulemaking. In short, the Commission’s adherence to trial-type proceedings in N-cases is not because it is “set in its old PRA ways,” but because the PAEA retained the link to formal adjudication under the APA. Thus, N-cases have been marked, among other things, by an extensive array of testimony, exhibits, library references, and written and oral cross-examination. Further consideration needs to be given to whether the NRC’s limited hearing process is based on language that simply refers to a “hearing on the record” or to the more extensive language in section 3661(c).

Many regard the opportunity for cross-examination under formal adjudication as “the gold standard” for getting to the heart of an issue, but this practice also contributes to the cost, complexity, and length of proceedings. In addition, in terms of the initial filing, the longstanding approach allows the Postal Service to place a large amount of documentation before the Commission, and then requires others to marshal resources to ferret out critical details contained in spreadsheets, testimony and other documents. This adds to the time needed to understand the ramifications of a proposal and to the time for completion.

A filing in an early N-case provides this useful perspective on the ultimate objective of any N-case review:

The essential thrust of § 3661 is that, in making decisions which affect the nature and character of the services provided to the general public, postal management must set forth on a public record the reasons behind any such change and the justification for it. Interested parties must have an opportunity to participate in that record, upon which this Commission will base its advisory opinion. Section 361 is, in effect, a “sunlight” provision equiring the Postal Service to be open and forthright when it makes significant changes in the nature of postal services, even though those changes are for management to suggest and to implement.

Memorandum of United Parcel Service on Questions Presented in Commission Order No. 62, and on Meaning of 39 U.S.C. § 3661 (July 14, 1975) in Docket No. N75-1, Response to PRC Order No. 62.

Update on S. 1010 and other related legislation.. As of June 15, 2012, a search on THOMAS, the Library of Congress's legislative web site, indicates there has been no post-hearing action on S. 1010. Nor has there been action on another bill, H.R. 2967, since its referral to subcommittee following introduction. This bill includes section 306, captioned "Expedited Consideration of Service Changes by PRC." It provides:

Section 3661 is amended--

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

'(c) If the Postal Service seeks expedited processing for time-sensitive advisory opinions, it shall state such request in its proposal filed under subsection (b) and the Commission, to the extent practical and in accordance with subsection (d), shall comply with the request for expedited consideration.'

However, the Senate has passed S. 1789, which includes a provision captioned "Time Limits for Consideration of Service Changes." This provision includes language affecting both the length of the N-case process and how soon the Postal Service can take action on a proposed nationwide change. Of interest with respect to expedition on the Commission's part is language providing that upon receipt of an advisory opinion request, the Commission shall provide the opinion not later than 90 days after the date of receipt of the proposal or a date that the Commission and Postal Service may, not later than 1 week after receipt, determine jointly.

VI. CONCLUSION

With respect to the questions the Commission posed in Order No. 1309, the answer is “Yes” as to whether some changes in its current rules N-case rules and practices are warranted. As to what the changes should be, the answer depends on what “a hearing on the record under APA §§ 556 and 557” requires and whether a legislative change removing or altering that phrase is adopted. Absent a legislative change, a closer look is needed at the precise language that led to the *Citizens Awareness* decision before that case can be considered a precedent for limited hearings.

If N-case proceedings continue to be conducted under the longstanding belief that “a hearing on the record under APA §§ 556 and 557” demands a full array of trial-type proceedings in N cases, then “expediting” changes would likely be limited to new or revised case management techniques. Some conforming changes to certain Subpart A requirements might be needed or the Commission could consider establishing a more self-contained Subpart D. On the other hand, if legislation is enacted changing the hearing standard, a much broader range of more fundamental changes can be considered.

Under any scenario, there are significant implications for the interests of the general public. These could be served, in general terms, by keeping the “sunlight” the objective in mind, and using this objective to guide development of a sound record. Early access to all essential supporting documentation would be essential.

Respectfully submitted,

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FEDERAL REGISTER

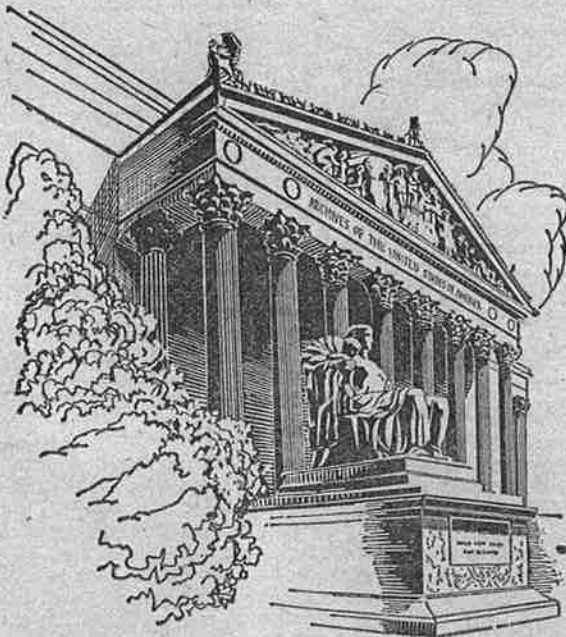
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PART II

POSTAL RATE COMMISSION

Rules of Practice and Procedure



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Title 39—POSTAL SERVICE

Chapter III—Postal Rate Commission

PART 3001—RULES OF PRACTICE AND PROCEDURE

The Postal Rate Commission promulgates this Part 3001 as the Postal Rate Commission's rules of practice and procedure governing the conduct of proceedings before the Commission in matters concerning rates of postage, fees for postal services, mail classification schedules and changes in such schedules, changes in the nature of postal services generally affecting service on a nationwide or substantially nationwide basis, complaints as to rates and services of such nature.

The Postal Reorganization Act, as well as the legislative history and matters developed in pertinent hearings before committees of the House and Senate, including presentations to the Congress by the Postal Service concerning revenue objectives and imminent proposals for postal rate increases, point to the urgency of the immediate promulgation of Part 3001.

Notice and public procedure are not required by the Administrative Procedure Act as to rules of agency organization, procedure or practices. Furthermore, as to the rules here promulgated the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, and contrary to the public interest.

This Part 3001 shall become effective upon its publication in the FEDERAL REGISTER.

Interested persons may submit written comments concerning these rules to the Postal Rate Commission, Washington, D.C. 20268.

By order of the Postal Rate Commission.

WILLIAM J. CROWLEY,
Chairman.

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AUTHORITY: The provisions of this Part 3001 issued under sec. 3603, 84 Stat. 759, 39 U.S.C. 3603.

Subpart A—Rules of General Applicability

§ 3001.1 The Commission and its offices.

(a) *The Commission.* The Postal Rate Commission is an independent establishment of the Executive Branch of the U.S. Government created by the Act. The Commission consists of five Commissioners appointed by the President one of whom is designated as Chairman by the President. Three members of the Commission constitute a quorum for the transaction of business, but all final acts of the Commission shall be by a vote of an absolute majority of the Commissioners.

(b) *The Chairman.* The Chairman has the administrative responsibility for assigning the business of the Commission to the other Commissioners and to the officers and employees of the Commission. He has the administrative duty to preside at the meetings and sessions of the Commission and to represent the Commission in matters specified by statute or executive order or as the Commission directs. The Commission will, in case of a vacancy in the office of the Chairman of the Commission, or in the absence or inability of the Chairman to serve, designate one of its members Acting Chairman to serve during the period of vacancy, absence or inability.

(c) *The Secretary.* The Secretary shall have custody of the Commission's seal, the minutes of all action taken by the Commission, its rules and regulations, its administrative and other orders, and records. All orders and other actions of the Commission shall be authenticated or signed by the Secretary or any such other person as may be authorized by the Commission.

(d) *The Staff.* The Staff consists of such accounting, economic, engineering, legal, and rate experts, and such other employees as the Commission, from time to time, shall find necessary.

(e) *Offices.* The offices of the Commission are in Washington, D.C. All communications to the Commission should be addressed to: Postal Rate Commission, Washington, DC 20268.

(f) *Hours.* The offices of the Commission will be open from 8:45 a.m. to 5:15 p.m. of each day except Saturdays, Sundays, and holidays, unless otherwise directed by Executive order or officially declared, with appropriate notice.

§ 3001.3 Scope of rules.

The rules of practice in this part are applicable to proceedings before the Postal Rate Commission under the Act, including those which involve a hearing on the record before the Commission or its designated presiding officer. They do not preclude the informal disposition of any matters coming before the Commission not required by statute to be determined upon notice and hearing.

§ 3001.4 Method of citing rules.

This part shall be referred to as the "rules of practice." Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, "3001.24 *Prehearing conferences*" shall be referred to as "section 24."

§ 3001.5 Definitions.

(a) "Act" means the Postal Reorganization Act (84 Stat. 719, Title 39, United States Code).

(b) "Postal Service" means the U.S. Postal Service established by the Act.

(c) "Commission" or "Commissioner" means, respectively, the Postal Rate Commission established by the Act or a member thereof.

(d) "Secretary" means the Secretary or the Acting Secretary of the Commission.

(e) "Presiding officer" means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or hearing examiner of the Commission designated to preside at hearings or conferences.

(f) "Person" means an individual, a partnership, corporation, trust, unincorporated association, or governmental agency.

(g) "Party" means the Postal Service, a complainant, or a person who has been permitted to intervene in a proceeding before the Commission.

(h) "Participant" means any party and the officer of the Commission who is designated to represent the interests of the general public.

(i) "Complainant" means a person or interested party who as permitted by section 3662 of the Act files a complaint with the Commission in the form and manner hereinafter prescribed.

(j) "Hearing" means a hearing under sections 556 and 557 of title 5, United States Code (80 Stat. 386), as provided by sections 3624, 3661, and 3662 of the Act.

(k) "Record" means the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, which constitutes the exclusive record for decision.

(l) "Effective date" of an order or notice issued by the Commission or an officer thereof means the date of issuance unless otherwise specifically provided.

§ 3001.6 Appearances.

(a) *By whom.* An individual may appear in his own behalf; a member of a partnership may represent the partnership; and an officer may represent a corporation, trust, unincorporated association, or governmental agency. A person may be represented in a proceeding by an attorney at law admitted to practice and in good standing before the Supreme Court of the United States, the highest court of any State or Territory of the United States or the District of Columbia, or the Court of Appeals or the District Court for the District of Columbia.

(b) *Authority to act.* When an officer of any party or an attorney acting in a representative capacity appears in person or signs a paper filed with the Commission, his personal appearance or signature shall constitute a representation to the Commission that he is authorized to represent the particular party in whose behalf he acts. Any person appearing before or transacting business with the Commission in a representative capacity may be required by the Commission or the presiding officer to file evidence of his authority to act in such capacity.

(c) *Designation for service.* A person intending to appear before the Commission or its presiding officer in a representative capacity for a party in a proceeding shall file with the Commission a notice of appearance in the form prescribed by the Secretary unless the person is named in an initial filing of the party whom he represents as a person to whom communications from the Commission in regard to the filing are to be

addressed. Failure to file a notice required by this paragraph shall constitute a waiver of the right to service of documents.

(d) *Standards of conduct.* Individuals practicing before the Commission shall conform to the standards of ethical conduct required of practitioners in the courts of the United States.

(e) *Disqualification and suspension.* After hearing, the Commission may disqualify and deny, temporarily or permanently, the privilege of appearing and practicing before it in any way to any individual who is found not to possess the requisite qualifications, or to have engaged in unethical or improper professional conduct. Contumacious conduct at any hearing before the Commission or its presiding officer shall be ground for exclusion of any individual from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.

(f) *Disqualification of former members and employees.*—(1) *Permanent.* No former Commissioner or employee, including a special Commission employee, shall act as agent or attorney before the Commission for anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise as a Commissioner or employee.

(2) *Temporary.* Within 1 year after termination of employment with the Commission, no former Commissioner or employee, including a special Commission employee, shall appear personally before the Commission on behalf of any person other than the United States in any Commission proceeding or matter in which the United States is a party or has a direct and substantial interest and which was under his official responsibility at any time within 1 year preceding termination of such responsibility. The term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

§ 3001.7 Ex parte communications.

(a) *Prohibition.* To avoid the possibility or appearance of impropriety or of prejudice to the public interest and persons involved in proceedings pending before the Commission, no person who is a party to any on-the-record proceeding or his counsel, agent, or other person acting on his behalf, nor any interceder, shall volunteer or submit to any member of the Commission or member of his personal staff, to the presiding officer, or to any employee participating in the decision in such proceeding, any ex parte

off-the-record communication regarding any matter at issue in the on-the-record proceeding, except as authorized by law; and no Commissioner, member of his personal staff, presiding officer, or employee participating in the decision in such proceeding, shall request or entertain any such communication. For the purposes of this section, the term "on-the-record proceeding" means a proceeding noticed pursuant to § 3001.17. The prohibitions of this paragraph shall apply from the date of issuance of such notice.

(b) *Placement in public file.* All written ex parte communications prohibited by paragraph (a) of this section shall be delivered to the Secretary of the Commission for placement in a public file associated with the case but separate from the record material upon which the Commission may rely in reaching its decision.

(c) *Offer of communications.* A Commissioner, member of his immediate staff, presiding officer or employee participating in the decision in any on-the-record proceeding who receives an offer of any communication concerning any matter at issue in such proceeding shall decline to listen to such communication and explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he will not consider the communication and shall promptly and fully inform the Commission in writing of the substance of and the circumstances attending the communication, so that the Commission will be able to take appropriate action. Such written report shall be included in the file maintained by the Secretary pursuant to paragraph (b) of this section.

(d) *Opportunity to rebut.* Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which the Secretary has associated with the record may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. Generally, in lieu of actually receiving rebuttal material, the Commission will direct that the alleged factual assertion and the proposed rebuttal be disregarded in arriving at a decision.

§ 3001.8 No participation by investigative or prosecuting officers.

In any proceeding noticed pursuant to § 3001.17, no officer, employee or agent of the Commission who appears in the hearing in a proceeding before the Commission as an attorney or witness or who actively participates in the preparation of evidence or argument presented by such persons, shall participate or advise as to the intermediate decision or Commission decision in that proceeding except as a witness or counsel in public proceedings.

§ 3001.9 Filing of documents.

(a) *Filing with the Commission.* The filing of any written document required by these rules or any applicable statute,

rule, regulation or order of the Commission, or by direction of the presiding officer shall be made by filing with the Office of the Secretary, Postal Rate Commission, Washington, DC 20268, during normal business hours on a date no later than that specified for such filing. Documents received after the close of normal business hours or on a Saturday, Sunday, or holiday, shall be deemed to be filed on the next regular business day.

(b) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule, regulation or order of the Commission shall be accepted for filing. Unacceptable filings will be rejected by the Secretary and will not be included in the file in the proceeding involved. The Secretary shall notify the sender of any unacceptable document and all parties to the proceeding in which such document was tendered that such document was rejected. Acceptance for filing shall not waive any failure to comply with the rules, and such failure may be cause for subsequently striking all or any part of any document.

§ 3001.10 Form and number of copies of documents.

(a) *Typewritten.* If not printed, documents filed with the Commission shall be typewritten on paper of letter size, 8 to 8½ inches wide by 10½ to 11 inches long, with left-handed margin not less than 1½ inches wide and other margins not less than 1 inch, except that tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. (The impression shall be on only one side of the paper unless there are more than 10 pages.) The text shall be double-spaced except that footnotes and quotations of more than a few lines may be single spaced. Type not smaller than elite shall be used. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service may be reproduced by any duplicating process that produces clear and legible copies.

(b) *Printed.* Printed documents filed with the Commission shall, insofar as practicable, not be less than 10-point type adequately leaded, on unglazed paper cut or folded to a size of 8 to 8½ inches wide and 10½ to 11 inches long, with inside margin not less than 1 inch wide, and with double-leaded text and single-leaded, indented quotations.

(c) *Number of copies.* Except for correspondence or as otherwise may be required by the Commission, the Secretary, or the presiding officer in any proceeding, an original and 14 fully conformed copies of each document required or permitted to be filed under this part shall be filed with the Secretary. The copies need not be signed but shall show the full name of the person signing the original document and the certificate of service attached thereto.

§ 3001.11 General contents of documents.

(a) *Caption and title.* The caption of a document filed with the Commission in

any proceeding shall clearly show the docket designation and title of the proceeding before the Commission. The title of such document shall show the name of the person in whose behalf the filing is made and a brief description of the document or the nature of the relief sought therein (i.e., motion for extension, brief on exceptions, complaint, petition to intervene, answer to complaint). If the document is filed on behalf of more than one person, a single name only need be included in the title.

(b) *Designation of person to receive service.* The first page of the initial document filed by any person in any proceeding shall state the name and full post office address of the person or persons who may be served with any documents relating to the proceeding.

(c) *Contents.* In the event there is no rule, regulation or order of the Commission which specifically prescribes the contents of any document to be filed, such document shall contain a proper identification of the parties concerned and a concise but complete statement of the relief sought and of the facts and citations of authority and precedent relied upon.

(d) *Improper matter.* Defamatory, scurrilous, or unethical matter shall not be included in any document filed with the Commission.

(e) *Subscription.* The original of any document filed with the Commission shall be signed in ink by the participant filing the same or by an authorized officer, employee, attorney or other representative, and all other copies of such document filed with the Commission and served on the participants in any proceeding shall be fully conformed thereto. The signature of any person subscribing any document filed with the Commission constitutes a certification that he has read the document being subscribed and filed; that he knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified in the document with full power and authority so to do; that to the best of his knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that such document is not filed for purposes of delay.

(f) *Table of contents.* All documents other than briefs filed with the Commission consisting of 20 or more pages shall contain a subject-index of the matter in such document with page references.

(g) *Certificate of service.* There shall be attached to the original of each document filed with the Commission a certificate of service signed in ink showing service on all participants in a proceeding as prescribed by § 3001.12. All other copies filed and served shall be fully conformed thereto.

§ 3001.12 Service of documents.

(a) *Service by the Commission.* Notices, orders, and other similar documents issued by the Commission or presiding officer shall be served by the Secretary upon the participants in the proceeding individually or by such groups

as may be directed by the Commission or presiding officer.

(b) *Service by the parties.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer.

(c) *Limitation on extent of service.* To avoid the imposition of an unreasonable burden upon participants, the Commission or the presiding officer may, by appropriate order, limit service to service upon participants intending to actively participate in the hearing, or upon a person or persons designated for properly representative groups, or by requiring the making of documents available for convenient public inspection, or by any combination of such methods.

(d) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and the person or persons designated for service of documents by each party with the address designated in the party's initial pleading in such proceeding or a notice of appearance as provided in § 3001.6(c); provided, however, the Secretary is not required to include on such list more than two designated representatives for any party to the proceeding. The service list shall show the participants actively participating in the hearing and representative groups established pursuant to paragraph (c) of this section. Service on the persons, active participants or groups on the Secretary's service list in any proceeding, as directed by the Commission or hearing officer, shall be deemed service in compliance with the requirements of this section.

(e) *Method of service.* Service may be made by first class mail or personal delivery to the address shown for the persons designated on the Secretary's service list. Service upon the Postal Service shall be made by delivering or mailing the same to the Office of the Assistant General Counsel, Postal Rates and Mail Classifications Divisions, U.S. Postal Service, Washington, DC 20260.

(f) *Date of service.* Whenever service is made by mail, the date of mailing shall be the date of service. Whenever service is made by personal delivery, the date of such delivery shall be the date of service.

(g) *Form of certificate of service.* The certificate of service shall show the name of the participant or his counsel making service, the date and place of service, and include the statement that "I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice."

§ 3001.13 Docket and hearing calendar.

The Secretary shall maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The Secretary shall maintain a hearing calendar of all proceedings which have been set for hearing, which proceedings shall be heard on the

date set in the hearing order, except that the Commission may for cause, with or without motion, at any time with due notice to the parties advance or postpone the date of hearing. The docket and hearing calendar shall be available for public inspection during the office hours of the Commission, insofar as consistent with the proper discharge of the Commission's duties.

§ 3001.14 Consolidation and separation of proceedings.

The Commission, with or without motion, may order proceedings involving related issues or facts to be consolidated for hearing of any or all matters in issue in such proceedings. The Commission may sever proceedings which have been consolidated, or order separate proceedings on any issue presented, if it appears that separate proceedings will be more convenient, expeditious, or otherwise appropriate.

§ 3001.15 Computation of time.

Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule or regulation of the Commission or a presiding officer, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday for the Commission, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, or holiday. A part-day holiday shall be considered as other days and not as a holiday.

§ 3001.16 Continuances and extensions of time.

Continuances of any proceeding or hearing and extensions of time for making any filing or performing any act required or allowed to be done within a specified time or by a specified date may be granted by the Commission or the presiding officer upon motion for good cause shown unless the time for performance or filing is limited by statute. Requests for extension of time shall be by written motion timely filed with the Commission stating the facts on which the application rests, except that after a hearing has convened, such requests shall be made by written or oral motion to the presiding officer. Requests for continuances or extensions of time may as a matter of discretion be acted upon without waiting for answers thereto.

§ 3001.17 Notice of proceeding.

(a) *When issued.* The Commission shall issue a notice of a proceeding to be determined on the record with an opportunity for any interested person to request a hearing whenever:

(1) The Postal Service files a formal request that the Commission submit a recommended decision on changes in postal rates or fees or establishing or changing the mail classification schedule;

(2) The Commission proposes on its own initiative to issue a recommended

decision on changes in the mail classification schedule;

(3) The Postal Service files a request with the Commission to issue an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis;

(4) The Commission in the exercise of its discretion determines that an opportunity for hearing should be provided with regard to a complaint filed pursuant to Subpart E of this part; or

(5) The Commission in the exercise of its discretion determines to institute any other proceeding under the Act.

(b) *Publication and service of notice.* Each notice of proceeding shall be published in the FEDERAL REGISTER and served on the Postal Service, and the complainant in a complaint proceeding.

(c) *Contents of notice.* The notice of a proceeding shall include the following:

(1) The general nature of the proceeding involved in terms of the categories listed in paragraph (a) of this section;

(2) A reference to the legal authority under which the proceeding is to be conducted;

(3) A concise description of proposals for changes in rates or fees, proposals for the establishment of or changes in the mail classification schedule, or proposals for changes in the nature of postal services or, in the case of a complaint, an identification of the complainant and a concise description of the subject matter of the complaint;

(4) The date by which petitions for leave to intervene and requests for hearing must be filed; and

(5) Such other information as the Commission may desire to include.

§ 3001.18 Nature of proceedings.

(a) *Proceedings to be set for hearing.* In any case noticed for a proceeding to be determined on the record pursuant to § 3001.17, the Commission shall hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

(b) *Procedure in hearing cases.* In proceedings which are to be set for hearing, the Commission shall issue a notice of hearing or prehearing conference pursuant to § 3001.19. After the completion of the hearing, the Commission or the presiding officer shall receive such briefs and hear such oral argument as may be ordered by the Commission or the presiding officer pursuant to §§ 3001.34 to 3001.37, and the Commission shall then issue a recommended decision, advisory opinion, or public report, as appropriate, in accordance with the provisions of §§ 3001.38 to 3001.39.

(c) *Procedure in non-hearing cases.* In any case noticed for a proceeding to be determined on the record in which a

hearing is not requested by any party or ordered by the Commission, the Commission or the presiding officer shall issue a notice of the procedure to be followed with regard to the filing of briefs and oral argument, and a recommended decision, advisory opinion, or public report, as appropriate, shall then be issued pursuant to the provisions of §§ 3001.34 to 3001.39. The Commission or presiding officer may, if necessary or desirable, call procedural conferences by issuance of a notice pursuant to § 3001.19.

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17, the Commission shall give due notice of any prehearing conference or hearing in the notice of proceeding by including therein the time and place of the conference or hearing or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing and the designation of the presiding officer. Similar notice shall be issued of the time and place where a hearing will be reconvened unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing. Such notices shall be published in the FEDERAL REGISTER and served on all participants in the proceeding involved.

§ 3001.20 Formal interventions.

(a) *Who may intervene.* A petition for leave to intervene will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17 from any person claiming an interest of such nature that his intervention is necessary or appropriate to the administration of the Act.

(b) *Contents of petitions.* A petition to intervene shall clearly and concisely set forth the nature and extent of the petitioner's interest in the issues to be decided, including the classifications of postal service utilized by the petitioner giving rise to his interest in the proceeding, and the position of the petitioner with regard to the proposed changes in postal rates, fees, classifications, or services, or the subject matter of the complaint, as described in the notice of the proceeding. Such petition shall affirmatively state whether or not the petitioner requests a hearing or in lieu thereof, a conference, and whether or not the petitioner intends to actively participate in a hearing. Such petition shall also include on page one thereof the name and full mailing address of the person or persons who are to receive service of any documents relating to such proceeding.

(c) *Form and time of filing of petitions.* Petitions to intervene shall be filed no later than the date fixed for the filing of such petitions in any notice or order with respect to the proceeding issued by

the Commission or its Secretary, unless in extraordinary circumstances for good cause shown, the Commission authorizes a late filing. Petitions to intervene shall conform to the requirements of §§ 3001.9 to 3001.11 and shall be served on the Postal Service and the complainant in a complaint proceeding pursuant to § 3001.12.

(d) *Answers.* Answers to petitions to intervene may be filed by any party to a proceeding or any person who has filed a petition to intervene therein no later than 7 days after the petition to intervene is filed.

(e) *Action on petitions.* As soon as practicable after the expiration of the time for filing answers to petitions to intervene, the Commission shall rule on each petition to intervene and shall grant or deny such intervention or may, if found to be appropriate, authorize limited participation.

(f) *Effect of granting intervention.* A person permitted to intervene shall be a party to the proceeding, subject, however, to the right of the Commission or the presiding officer as specified in § 3001.24 to require two or more interveners having substantially like interests and positions to join together for purposes of service of documents, presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral arguments to the Commission or presiding officer. No decision granting intervention to any person shall be deemed to constitute a decision that the intervening party has such an interest in the proceeding that he would be aggrieved by an ultimate decision or order of the Commission.

§ 3001.21 *Motions* to the Commission.

(a) *Scope and contents.* An application to the Commission for an order or ruling not otherwise specifically provided for in this part shall be by motion. Motions shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Commission and served pursuant to the provisions of §§ 3001.9 to 3001.12.

(b) *Answers.* Within 7 days after a motion is filed, or such other period as the Commission may fix, any party to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission otherwise provides, no reply to an answer or any further responsive document shall be filed.

§ 3001.22 *Requests for waiver.*

Upon request by motion, any requirement of any subpart of this Part 3001 may be waived in whole or in part to the extent permitted by law upon a showing that such waiver will not unduly prejudice the interests of other participants

and is consistent with the public interest and the Commission's expeditious discharge of its responsibilities under the Act. A request for waiver shall not be entertained unless it is timely filed so as to permit Commission disposition of the request prior to the date specified for the requirement for which waiver is requested. The pendency of a request for waiver does not justify or excuse any person from timely meeting the requirements of this part.

§ 3001.23 *Presiding officers.*

(a) *Authority delegated.* Presiding officers shall have the authority, within the Commission's powers and subject to its published rules, as follows:

(1) To regulate the course of the hearing, including the recessing, reconvening, and adjournment thereof, unless otherwise directed by the Commission, as provided in § 3001.16;

(2) To administer oaths and affirmations;

(3) To issue subpoenas authorized by law;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or authorize that depositions be taken as provided in § 3001.33;

(6) To hold appropriate conferences before or during hearings and to rule on matters raised at such conferences including those specified in paragraph (d) of § 3001.24;

(7) To dispose of procedural requests or similar matters but not, before their initial or recommended decision, to dispose of motions made during hearings to dismiss proceedings or other motions which involve a final determination of the proceeding;

(8) Within their discretion, or upon direction of the Commission, to certify any question to the Commission for its consideration and disposition;

(9) To submit an initial or recommended decision in accordance with §§ 3001.38 and 3001.39; and

(10) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the Commission functions and with the rules, regulations, and policies of the Commission.

(b) *Conduct of hearings.* It is the duty of the presiding officer to conduct a fair and impartial hearing and to maintain order. Any disregard by participants or counsel of his rulings on matters of order and procedure shall be noted on the record, and where he deems it necessary shall be made the subject of a special written report to the Commission. In the event that participants or counsel should be guilty of disrespectful, disorderly, or contumacious language or conduct in connection with any hearing, the presiding officer immediately may submit to the Commission his report thereon, together with his recommendations, and in his discretion, suspend the hearing.

(c) *Limitations.* Presiding officers shall perform no duties inconsistent with their duties and responsibilities as such. Except to the extent required for the disposition of ex parte matters as authorized

by law and by the rules of the Commission, no presiding officer shall, in any proceeding in which the Commission may so direct, or in any proceeding required by statute to be determined on the record after opportunity for hearing, consult any person on any matter in issue unless upon notice and opportunity for all participants to be heard.

(d) *Disqualification.* A presiding officer may withdraw from a proceeding when he deems himself disqualified, or he may be withdrawn by the Commission for good cause found after timely affidavits alleging personal bias or other disqualifications have been filed.

§ 3001.24 *Prehearing conferences.*

(a) *Initiation and purposes.* In any proceeding the Commission or the presiding officer may, with or without motion upon due notice as to time and place, direct the participants in a proceeding to appear for a prehearing conference for the purposes of considering all possible ways of expediting the proceeding, including those in paragraph (d) of this section. It is the intent of the Commission to issue its recommended decision or advisory opinion on requests under sections 3622, 3623, and 3661 of the Act with the utmost practicable expedition. The Commission directs that these prehearing procedures shall be rigorously pursued by the presiding officer and all participants to that end.

(b) *Informal off-the-record procedures.* In order to make the prehearing conference as effective as possible, the presiding officer may, in his discretion, direct that conferences be held off the record at the beginning of a prehearing conference or at other appropriate times, without the presiding officer being present. Such informal off-the-record conferences shall be presided over by the Commission's officer designated to represent the interests of the general public or such other person as the participants may select. At such off-the-record conferences the participants shall be expected to reach agreement on those matters which will expedite the proceeding, including the matters specified in the notice of the prehearing conference, in the ruling of the presiding officer directing that the off-the-record conference be held and in paragraph (d) of this section. A report on the results of such off-the-record conference shall be made to the presiding officer on the record at a time specified by the presiding officer and he shall then determine the further prehearing procedures to be followed.

(c) *Required preparation and cooperation of all parties.* All participants in any proceeding before the Commission are required and expected to come to the prehearing conference fully prepared to discuss in detail and resolve all matters specified in paragraph (d) of this section, and notice of the prehearing conference, and such other notice or agenda as may have been issued by the Commission or the presiding officer. All participants are required and expected to cooperate fully at all stages of the proceeding to achieve these objectives, through thorough advance preparation for the

prehearing conference, including informal communications between the participants, requests for discovery and appropriate discovery procedures at the earliest possible time and no later than at the prehearing conference, and the commencement of preparation of evidence and cross-examination. The failure of any participant to appear at the prehearing conference or to raise any matters that could reasonably be anticipated and resolved at the prehearing conference shall not be permitted to unduly delay the progress of the proceeding and shall constitute a waiver of the rights of the participant with regard thereto, including all objections to the agreements reached, actions taken, or rulings issued by the presiding officer with regard thereto.

(d) *Matters to be pursued.* At the prehearing conference in any proceeding, the presiding officer and the participants shall consider and resolve the following matters:

(1) The definition and simplification of the issues including any appropriate explanation, clarification, or amendment of any proposal, filing, evidence, complaint or other pleading filed by any participant.

(2) Arrangement for timely completion of discovery from the Postal Service or any other participant with regard to information desired by any participant with regard to any issues in the proceeding or prior filings, evidence or pleadings of any participant.

(3) Agreement as to procedures for timely discovery with regard to any future evidentiary filings of any participant.

(4) Stipulations, admissions or concessions as to evidentiary facts, and agreements as to documentary matters, exhibits and matters of official notice, which will avoid unnecessary proof or dispute.

(5) Grouping parties with substantially like interests for purposes of presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral argument to the Commission or presiding officer.

(6) Disclosure of the number, identity and qualifications of witnesses, and the nature of their testimony, particularly with respect to the policies of the Act and, as applicable according to the nature of the proceeding, each factor stated in section 3622 or 3623 of the Act.

(7) Limitation of the scope of the evidence and the number of witnesses to eliminate irrelevant, immaterial, or cumulative and repetitious evidence.

(8) Procedures to direct and control the use of discovery prior to the hearing and submission of written testimony and exhibits on matters in dispute so as to restrict to a bare minimum the amount of hearing time required for oral cross-examination of witnesses.

(9) Division of the proceeding where practicable into two or more phases for separate simultaneous hearings.

(10) Fixing dates for the submission and service of such written testimony and

exhibits as may be appropriate in advance of the hearing.

(11) Order of presentation of the evidence and cross-examination of witnesses so that the hearing may proceed in the most expeditious and orderly manner possible.

(12) All other matters which would aid in an expeditious disposition of the proceeding, including consent of the participants to the conduct of the entire proceedings off the record.

(e) *Rulings by presiding officer.* The presiding officer at such prehearing conference, irrespective of the consent of the participants, shall dispose of by ruling (1) any of the procedural matters itemized in paragraph (d) of this section and (2) such other procedural matters on which he is authorized to rule during the course of the hearing if ruling at this stage would expedite the proceeding. Either on the record at the conclusion of such prehearing conference, or by order issued shortly thereafter, the presiding officer shall state the agreements reached by the participants, the actions taken, and the rulings made by the presiding officer. Such rulings shall control the subsequent course of the proceedings unless modified at the hearing to prevent manifest injustice.

§ 3001.25 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written interrogatories, including request for nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify.

(b) *Answers and objections.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. The answers are to be signed by the person making them and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections if any, within 10 days after service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing.

(c) *Supplemental answers.* A participant who has answered interrogatories is

under the duty to seasonably amend a prior answer if he obtains information upon the basis of which he knows that the answer was incorrect when made or is no longer true.

(d) *Orders.* The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

§ 3001.26 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon which the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection.

(b) *Answers and objections.* The participant upon whom the request is served shall serve a written answer on the participant who filed the request within 5 days after the service of the request; or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to, in which event the reason for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

(c) *Orders.* The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in paragraph (d) of § 3001.25 as may be appropriate.

§ 3001.27 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing.

(b) *Answers and objections.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 10 days after service of the request, or within such

other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or objection addressed to the matter which shall be signed by the participant or his attorney.

(c) *Orders.* If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served, or may determine that final disposition of the request be made at a pretrial conference or at a designated time prior to the hearing.

§ 3001.28 Failure to comply with orders for discovery.

If a participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery, pursuant to §§ 3001.25 to 3001.27, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

§ 3001.29 Settlement conferences.

Any participant in a proceeding may submit offers of settlement or proposals of adjustment at any time and may request a conference between the participants to consider such offers or proposals. The Commission or the presiding officer shall afford the participants appropriate opportunity prior to or during the hearing for conferences for the purpose of considering such offers or proposals as time, the nature of the proceeding, and the public interest permit. Unaccepted offers of settlement or adjustment and proposed stipulations not agreed to shall be privileged and shall not be admissible in evidence against any participant claiming such privilege.

§ 3001.30 Hearings.

(a) *How Initiated.* Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice by the Commission as provided in § 3001.19.

(b) *Presiding officer.* All hearings shall be held before the Commission sitting en banc, or a duly designated presiding officer.

(c) *Entering of appearances.* The Commission or the presiding officer before whom the hearing is held will cause to be entered on the record all appearances together with a notation showing in whose behalf each such appearance has been made.

(d) *Order of procedure.* In public hearings before the Commission, the Postal Service shall open and close in proceedings which it has initiated under section 3622, 3623, or 3661 of the Act, and a complainant shall open and close

in proceedings on complaints filed under section 3662 of the Act. With respect to the order of presentation of all other participants, and in all other proceedings, unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of evidence and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e) *Presentation by parties.* Any participant shall have the right in public hearings of presentation of evidence, cross-examination, objection, motion, and argument. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary.

(f) *Limitations on presentation of the evidence.* The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commission or the presiding officer may limit appropriately (1) the number of witnesses to be heard upon any issue, (2) the examination by any participant to specific issues, and (3) the cross-examination of a witness to that required for a full and true disclosure of the facts necessary for the disposition of the proceeding and to avoid irrelevant, immaterial, or unduly repetitious testimony.

(g) *Motions during hearing.* After a hearing has commenced in a proceeding, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall set forth the ruling or relief sought, and state the grounds therefor and statutory or other supporting authority. Motions made during hearings may be stated orally upon the record, except that the presiding officer may require that such motions be reduced to writing and filed separately. Any participant shall have the opportunity to answer or object to such motions at the time and in the manner directed by the presiding officer.

(h) *Rulings on motions.* The presiding officer is authorized to rule upon any such motion not formally acted upon by the Commission prior to the commencement of a prehearing conference or hearing where immediate ruling is essential in order to proceed with the prehearing conference or hearing, and upon any motion to the presiding officer filed or made after the commencement thereof, except that no motion made to the presiding officer, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon affirmatively by the presiding officer except as a part of his intermediate decision. This section shall not preclude a presiding officer, within his discretion, from referring any motion made in hearing to the Commission for ultimate determination.

§ 3001.31 Evidence.

(a) *Form and admissibility.* In any public hearing before the Commission, or a presiding officer, relevant and material evidence which is not unduly repetitious or cumulative shall be admissible.

Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(b) *Documentary.* Documents and detailed data and information shall be presented as exhibits. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the participant offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, such document may be marked for identification, and, if properly authenticated, the relevant and material parts thereof may be read into the record, or, if the Commission or the presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the participant offering the same to the other participants or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

(c) *Commission's files.* In case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

(d) *Public document items.* Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion or published scientific or economical statistical data issued by any of the Executive Departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations) and such document (or part thereof) has been shown by the offeror thereof to be reasonably available to the public, such document need not be produced or physically marked for identification, but may be offered in evidence as a public document item by clearly identifying the document and the relevant parts thereof.

(e) *Prepared testimony.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit.

(f) *Form of prepared testimony and exhibits.* All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3001.10 (a) and (b).

(g) *Copies to participants.* Except as otherwise provided in these rules, copies of prepared testimony and exhibits shall be furnished to the presiding officer and to the participants or counsel, unless the presiding officer otherwise directs. In addition, unless otherwise directed by the

presiding officer, eight copies of all prepared testimony and exhibits shall be furnished for the use of the Commission.

(h) *Reception and ruling.* The presiding officer shall rule on the admissibility of evidence and otherwise control the reception of evidence so as to confine it to the issues in the proceeding.

(i) *Offers of proof.* Any offer of proof made in connection with any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form, or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(j) *Official notice of facts.* Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the general knowledge of the Commission as an expert body: *Provided*, That any participant shall, on timely request, be afforded an opportunity to show the contrary.

§ 3001.32 Appeals from rulings of the presiding officer.

(a) *During hearing or conference.* Rulings of the presiding officer may be appealed by participants during the course of conferences or hearings only in extraordinary circumstances where the presiding officer shall find that prompt decision by the Commission is necessary to prevent detriment to the public interest. In such instance the appeal shall be referred forthwith by the presiding officer to the Commission for determination.

(b) *Commission action.* Unless the Commission acts upon questions referred by the presiding officer within 7 days after referral, the appeal shall be deemed to be denied. The participants in the proceeding shall be notified by the presiding officer of the date of referral.

§ 3001.33 Depositions.

(a) *When permissible.* The testimony of a witness may be taken by deposition upon authorization by the Commission or the presiding officer on application of any participant before the hearing is closed. An authorization to take the deposition of a witness will be issued only if (1) the person whose deposition is to be taken would be unavailable at the hearing, or (2) the deposition is deemed necessary to perpetuate the testimony of the witness, or (3) the taking of the deposition is necessary to prevent undue and excessive expense to a participant and will not result in undue delay or an undue burden to other participants.

(b) *Application.* An application for authorization to take testimony by deposition shall be filed in duplicate with the Commission or the presiding officer and shall state (1) the name, identification, and post office address of the witness, (2) the subject matter of the testimony, (3) the time and place of taking the dep-

osition, (4) the name, identification, and post office address of the officer before whom the deposition is to be taken, and (5) the reasons why the testimony of such witness should be taken by deposition.

(c) *Authorization.* If the application so warrants, the Commission or the presiding officer will issue and serve or cause to be served on the participants within a reasonable time in advance of the time fixed for taking testimony, an authorization for the taking of such testimony by deposition. Such authorization shall name the witness, and the time, place, and officer before whom the deposition shall be taken, and shall specify the number of copies of the deposition to be submitted to the Commission. The authorization may include such terms and conditions as the Commission or the presiding officer deems fair and reasonable.

(d) *Qualifications of officer before whom taken.* Such deposition may be taken before a presiding officer or other authorized representative of the Commission, or any officer, not being counsel or attorney for any participant or having an interest in the proceeding, authorized to administer oaths by the laws of the United States or of the place where the deposition is to be taken.

(e) *Oath and reduction to writing.* The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by some one acting under his direction and in his presence, record the examination of the witness. The examination shall be transcribed in the form specified in § 3001.10(a), signed by the witness, and certified in the usual form by the officer. The original of the deposition, together with the number of copies required by the authorization to be made by such officer, shall be forwarded by the officer to the Secretary by personal delivery or registered mail. Upon receipt the Secretary shall hold the original for use in the hearing upon request by any participant and shall make copies available for public inspection.

(f) *Scope and conduct of examination.* Unless otherwise directed in the authorization, the witness may be questioned regarding any matter which is relevant to the issues involved in the proceeding. Participants shall have the right of cross-examination and objection. In lieu of participation in the oral examination, participants may transmit written interrogatories to the officer who shall propound them to the witness.

(g) *Objections.* The officer before whom the deposition is taken shall not have the power to rule upon procedural matters or the competency, materiality, or relevancy of questions. Procedural objections or objections to questions of evidence shall be stated briefly and recorded in the deposition without argument. Objections not stated before the officer shall be deemed waived.

(h) *When a part of the record.* No portion of a deposition shall constitute a part of the record in the proceeding unless received in evidence by the presiding officer. If only a portion of the

deposition is offered in evidence by a participant, any other participant may require him to introduce all of it which is relevant to the part introduced, and any participant may offer in evidence any other portions.

(i) *Fees.* Witnesses whose depositions are taken and the officer taking the same shall be entitled to the same fees as are paid for like services in the District Courts of the United States to be paid directly by the participant or participants on whose application the deposition was taken.

§ 3001.34 Briefs.

(a) *When filed.* Such briefs shall be filed in any proceeding as may be ordered by the Commission or the presiding officer. The determination of what, if any, briefs are to be filed and the time to be allowed for the filing of briefs shall give regard to the timely issuance of a recommended decision or advisory opinion to the Postal Service within the contemplation of sections 3641(a) and 3661 of the Act. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants involved, the filing of initial and reply briefs or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the participants may be directed to file more than one brief and at different times rather than a single brief at the same time.

(b) *Contents.* Each brief filed with the Commission shall be as concise as possible, within any page limitation specified by the Commission or the presiding officer, and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears;

(2) A concise statement of the case from the viewpoint of the filing participant;

(3) A clear, concise and definitive statement of the position of the filing participant as to the proposals of the Postal Service, the subject matter of the complaint, or recommended decision, advisory opinion, or public report to be issued;

(4) A discussion of the evidence, reasons, and authorities relied upon with exact references to the record and the authorities; and

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) *Incorporation by references.* Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading or document.

(d) *Excerpts from the record.* Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(e) *Filing and service.* Briefs shall be filed in the form and manner and served as required by §§ 3001.9 to 3001.12.

§ 3001.35 Proposed findings and conclusions.

In lieu of formal briefs the Commission or the presiding officer may direct the filing of proposed findings and conclusions with a brief statement of the supporting reasons for each proposed finding and conclusion.

§ 3001.36 Oral argument before the presiding or other designated officer.

In any case in which the presiding officer is to issue an initial or recommended decision, or another designated officer of the Commission is to issue a recommended decision, such officer may permit the presentation of oral argument before him when, in his opinion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants his hearing such argument. Such officer shall determine the time and place for oral argument. He may specify the issue or issues on which oral argument is to be presented, the order in which the presentations shall be made, and the amount of time allowed each participant. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

§ 3001.37 Oral argument before the Commission.

(a) *When ordered.* In any proceeding before the Commission for decision, the Commission, upon the request of any participant or on its own initiative, may order oral argument when, in the Commission's discretion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and public interest warrants such argument.

(b) *How requested.* Any participant in a proceeding before the Commission for decision may request oral argument before the Commission by filing a timely motion pursuant to § 3001.21. In a proceeding before the Commission on exceptions to an intermediate decision, such motion shall be filed no later than the date for the filing of briefs on exceptions. Motions requesting oral argument may be included in briefs or briefs on exceptions or in a separate document.

(c) *Notice of oral argument.* The Commission shall rule on requests for oral argument, and if argument is allowed, the Commission shall notify the participants of the time and place set for argument, the amount of time al-

lowed each participant, and the issue or issues on which oral argument is to be heard. Unless otherwise ordered by the Commission, oral argument shall be limited to matters properly raised on the record and in the briefs before the Commission.

(d) *Use of documents at oral argument.* Charts, graphs, maps, tables and other written material may be presented to the Commission at oral argument only if limited to facts in the record of the case being argued and if copies of such documents are filed with the Secretary and served on all parties at least 7 days in advance of the argument. Enlargements of such charts, graphs, maps and tables may be used at the argument provided copies are filed and served as required by this paragraph.

§ 3001.38 Omission of intermediate decisions.

(a) *Basis of omission.* In any proceeding noticed pursuant to § 3001.17, the Commission, on the motion of any participant or on its own initiative, may direct the certification of the record to the Commission and omit any intermediate decision upon a finding on the record that due and timely execution of its functions imperatively and unavoidably so requires. In proceedings in which all participants concur in a request by any participant that any intermediate decision be omitted, the Commission shall direct the certification of the record to the Commission and forthwith render a final decision unless the Commission denies such request within 10 days next following its filing or referral by the presiding officer.

(b) *Requests for omission.* Requests for omission of the intermediate decision in any proceeding shall be made by motion pursuant to § 3001.21 or made orally on the record before the presiding officer who shall promptly refer the same to the Commission. Such requests shall specify (1) the concurrence of other parties and (2) whether opportunity for filing briefs or presenting oral argument to the Commission is desired or waived. Failure of any party to object to such request shall constitute a waiver of any objections.

§ 3001.39 Intermediate decisions.

(a) *Initial decision by presiding officer.* In any proceedings in which a Commissioner or hearing officer has presided at the reception of evidence, such presiding officer, as soon as practicable after the conclusion of the hearing and the filing of briefs, shall certify and file with the Secretary, a copy of the record of the hearing and his initial decision on the matters and issues presented for decision in such proceeding.

(b) *Tentative decision.* Prior to the issuance of an initial decision by the presiding officer, the Commission, with notice to the participants or by order in specific cases or by general rule for a class of cases, may direct the certification of the record to the Commission for the purpose of the issuance of a tentative decision. In such cases, the Commission

may issue a tentative decision or require that the presiding officer or any designated responsible officer of the Commission recommend a decision.

(c) *Contents.* All intermediate decisions (initial, recommended or tentative) shall include (1) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and (2) the appropriate recommended decision, advisory opinion or public report pursuant to the Act. An intermediate decision in a proceeding under section 3622 or 3623 of the Act shall include a statement specifically responsive to the criteria established under section 3622 or 3623 of the Act, as the case may be; and an intermediate decision in a proceeding under section 3661 of the Act shall include a determination of the question of whether or not the proposed change in the nature of postal service conforms to the policies established under the Act.

(d) *Service and Commission review.* All intermediate decisions shall be part of the record, shall be served on the participants to the proceeding by the Secretary pursuant to § 3001.12 and shall be subject to review by the Commission on its own initiative, or the filing of exceptions by the participants pursuant to § 3001.40.

(e) *Unavailability of presiding officer.* In any proceeding in which the intermediate decision is not omitted pursuant to § 3001.38, if a presiding officer becomes unavailable to issue an intermediate decision on a timely basis, the Commission shall, by a notice served on the participants require the record to be certified to it and it shall either designate a qualified responsible officer of the Commission to issue a recommended decision or will itself issued a tentative decision, as the Commission may deem appropriate.

(f) *Effect of intermediate decision.* Unless briefs on exceptions are filed to an intermediate decision pursuant to § 3001.40 or unless the Commission issues an order to review an intermediate decision on its own initiative, the intermediate decision shall become the final action of the Commission after 30 days from the date of issuance thereof. If briefs on exceptions are timely filed or the Commission initiates review on its own motion, the intermediate decision is stayed until further order of the Commission.

§ 3001.40 Exceptions to intermediate decisions.

(a) *Briefs on exceptions and opposing exceptions.* Any participant in a proceeding may file exceptions to any intermediate decision by filing a brief on exceptions with the Commission within 15 days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. Any participant to a proceeding may file a response to briefs on exceptions within 15 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the Commission. No

further response will be entertained unless the Commission upon motion for good cause shown or on its own initiative, so orders.

(b) *Filing and contents.* Briefs on exceptions and briefs opposing exceptions shall be filed in accordance with § 3001.34. In briefs on exceptions, the discussion of evidence, reasons and authorities shall be specifically directed to the findings, conclusions and recommendations in the intermediate decision to which exception is taken. Briefs on exceptions should not include a discussion of evidence and authorities on matters and issues to which no exception to the intermediate decision is taken. Briefs on exceptions and briefs opposing exceptions need not contain a statement of the case to the extent that it was correctly stated in either the intermediate decision or the brief on exceptions of another participant to which reference is made.

(c) *Failure to except results in waiver.* Any participant who fails to except or object to any part of an intermediate decision in its brief on exceptions may not thereafter raise such exceptions or objections which shall be deemed to have been waived.

§ 3001.41 Rulemaking proceedings.

(a) *General notice.* Before the adoption of any rule of general applicability, or the commencement of any hearing on any such proposed rulemaking, the Commission will cause general notice to be given by publication in the FEDERAL REGISTER, such notice to be published therein not less than 15 days prior to the date fixed for the consideration of the adoption of a proposed rule or rules or for the commencement of the hearing, if any, on the proposed rulemaking, except where a shorter period is reasonable and good cause exists therefor. However, where the Commission, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may proceed with the adoption of rules without notice by incorporating therein a finding to such effect and a concise statement of the reasons therefor.

(b) *Contents of notice.* The notice shall include (1) a statement of the time, place and nature of the public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(c) *Participation.* After notice given as provided in paragraph (a) of this section, the Commission shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.

(d) *General statement as to basis and purpose.* After consideration of the relevant matter presented, the Commission shall incorporate in the rules adopted a concise general statement of their basis and purpose.

(e) *Exceptions.* Except when notice or hearing is required by statute, the Commission may issue at any time rules of organization, procedure or practice, or interpretive rules, or statements of policy, without notice or public procedure, and this section is not to be construed as applicable to the extent that there may be involved any military, naval or foreign affairs function of the United States, or any matter relating to the Commission's management or personnel, or to U.S. property, loans, grants, benefits, or contracts.

§ 3001.42 Public information and requests.

This section prescribes the rules governing: Publication of recommended decisions, advisory opinions, and public reports; and public records of the Commission.

(a) *Notice and publication.* Service of intermediate and recommended decisions, advisory opinions and public reports upon parties to the proceedings is provided in §§ 3001.12(a) and 3001.39(d). Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, procedural and substantive rules, and amendments thereto will be filed with and published in the FEDERAL REGISTER. Commission recommended decisions, advisory opinions and public reports, Commission orders, and intermediate decisions will be released to the press and made available to the public promptly.

(b) *Public records.* The public records of the Commission, available upon specific request for inspection and copying during regular business hours in the Secretary's office include:

(1) All submittals and filings as follows:

(i) Requests of the Postal Service for recommended decisions or advisory opinions, public reports, complaints (both formal and informal) and other papers seeking Commission action;

(ii) Financial, statistical and other reports to the Commission, and other filings and submittals to the Commission in compliance with the requirements of any statute, Executive order, or Commission rule, regulation, or order;

(iii) All answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts, and briefs in any matter or proceeding;

(iv) All exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of, any of the foregoing;

(v) Any Commission correspondence relating to any of the foregoing.

(2) All other parts of the formal record in any matter or proceeding set for formal or statutory hearing and any Commission correspondence related thereto. "Formal record" includes in addition to all the filings and submittals, any notice or Commission order initiating the matter or proceeding, and, if a hearing is held, the following: the designation of the presiding officer, transcript

of hearing, all exhibits received in evidence, offers of proof, motions, stipulations, proofs of service, referrals to the Commission, and determinations made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based; it does not include any unaccepted offer of settlement made by a party in the course of a proceeding and not formally submitted to the Commission.

(3) Any proposed testimony or exhibit filed with the Commission but not yet offered or received in evidence.

(4) All presiding officer actions and all presiding officer correspondence and memoranda to or from others except within his own office.

(5) All Commission orders, notices, findings, determinations, and other actions in any matter or proceeding and all Commission minutes which have been approved.

(6) All Commission correspondence relating to any furnishing of data or information by the Postal Service.

(7) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department or agency.

(8) Commission correspondence and reports on legislative matters under consideration by the Office of Management and Budget or Congress but only if and after made public or released for publication by that Office or the Committee or Member of Congress involved.

(9) Commission correspondence on the interpretation or applicability of any statute, rule, regulation, recommended decision, advisory opinion, or public report issued or administered by the Commission and letters of opinion on that subject signed by the General Counsel and sent to others than the Commission, a Commissioner, or any of the staff.

(10) Copies of all filings by the Commission, and all orders, judgments, decrees, and mandates directed to the Commission in Court proceedings involving Commission action and all correspondence with the courts or clerks of court.

(11) The Commission's administrative and operating manuals as issued.

(12) All other records of the Commission except for those that are:

(i) Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(ii) Related solely to the internal personnel rules and practices of the Commission;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(vi) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(vii) Written communications between or among the Commission, members of the Commission, the Secretary, and expressly designated members of the staff while particularly assigned, in accordance with all applicable legal requirements, to aid the Commission in the drafting of any recommended decision, advisory opinion or public report and findings, with or without opinion, or report in any matter or proceeding;

(viii) Unaccepted offers of settlement in any matter or proceeding unless or until made public by act of the offeror.

(c) *Other records.* Records not made part of the public records by this section may be requested in writing, accompanied by a showing in support thereof, filed with the Secretary and will be made available for public reference upon good cause shown by order of the Commission where consistent with the public interest and permitted by the Commission's statutory authority.

(d) *Procedure in event of withholding of public records.* In any case where there is a question of interpretation under paragraph (b) of this section, the person seeking such record may request the Secretary, by petition to make such record available for inspection and copying. The Secretary shall either cause the record to be made available or shall state in writing the basis for his determination that the document requested is not a public record under paragraph (b) of this section. If the Secretary denies the petition, the person seeking the record may appeal such denial to the Commission by petition conforming to the requirements of §§ 3001.9 to 3001.12.

(e) *Procedure in event of subpoena.* If an officer or employee of the Commission is served with a subpoena duces tecum, material which is not part of the public files and records of the Commission shall be produced only as authorized by the Commission. Service of such a subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it deems advisable.

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

§ 3001.51 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to section 3622 of the Act that the Commission submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal service if the Postal Service determines that such changes would be in the public interest and in accordance with the policies of the Act. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart.

§ 3001.52 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on changes in rates or fees subject to this subpart, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.54.

§ 3001.53 Filing of prepared direct evidence.

Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed changes or adjustments in rates or fees are in the public interest and are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

§ 3001.54 Contents of formal requests.

(a) *General requirements.* Each formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. Detailed data, information, and statements of explanation or reasons set forth in the Postal Service's prepared direct evidence may be relied upon for purposes of the formal request without restatement therein by specific reference to the portions of the prepared direct evidence relied upon.

(b) *Specific information.* Subject to the right of the Commission to request additional information, each formal request shall include the following, where applicable:

(1) The then effective rate or rates of postage and fee or fees for postal service and the rate or rates of postage and fee or fees for postal service as proposed to be changed or adjusted by the Postal Service;

(2) The total estimated costs of the Postal Service as specified in section 3621 of the Act which forms the basis for the proposed change in rates or fees. Such estimated costs shall be for a twelve-month period beginning not more than 9 months subsequent to the filing date of the formal request. Operating expenses included in such costs shall be shown with such reasonable detail as to classification and with such reasonable explanation so that the estimated amount for each item of expense may be readily understood. The amounts in-

cluded for depreciation on capital facilities and equipment, debt service, and a reasonable provision for contingencies shall be stated and explained in reasonable detail.

(3) Estimated revenues of the Postal Service from the then effective postal rates and fees and from the rates and fees as proposed to be changed or adjusted, shown separately by each class of mail or type of mail service and in total, and all other revenues of the Postal Service including appropriations, for the 12-month period utilized in the determination of the total estimated costs of the Postal Service upon which the request for changes in rates or fees is based;

(4) A statement of the actual costs and revenues of the Postal Service for the most recent 12-month period for which actual costs and revenues are reasonably available in the same detail as the estimated costs of the Postal Service upon which the request for changes in rates or fees is based, together with a comparison for each cost classification between actual costs thus shown and the estimated costs for the future 12-month period and an explanation of the reasons and basis for the differences;

(5) An analysis of the direct and indirect costs attributable to each class of mail or type of mail service and the portion of all other costs of the Postal Service reasonably assignable to each such class or type, together with a full statement and supporting information and data with regard to the nature and propriety of the costing concepts and the methods of cost allocation or assignment utilized;

(6) Such studies, information and data relevant to the criteria established by section 3622 of the Act with appropriate explanations as will assist the Commission in determining whether or not the proposed rates or charges for postal service are in accordance with such criteria.

§ 3001.55 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the parties permitted to intervene as provided in § 3001.12.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

§ 3001.61 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to section 3623 of the Act that the Commission submit a recommended decision on establishing or changing the mail classification schedule. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart.

§ 3001.62 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on establishing or changing the mail classification schedule, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.64.

§ 3001.63 Filing of prepared direct evidence.

Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the mail classification schedule or changes therein proposed by the Postal Service are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

§ 3001.64 Contents of formal requests.

(a) *General requirements.* Each formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed new mail classification schedule or the proposed changes therein and to show that the mail classification schedule as proposed to be established or changed is in accordance with the policies and the applicable criteria of the Act. Detailed data and information and statements of reasons or basis set forth in the Postal Service's prepared direct evidence may be relied upon for purposes of the formal request without restatement therein by reference in the request to the portions of the prepared direct evidence relied upon.

(b) *Specific information.* Subject to the right of the Commission to request additional information, each formal request shall include the following, where applicable:

(1) The then effective mail classification schedule and the mail classification schedule to be established; or, after the establishment of the mail classification schedule, the then effective mail classification schedule and the proposed changes;

(2) A full and complete statement of the reasons and basis for the Postal Service's proposed mail classification schedule or proposed changes therein;

(3) Such studies, information and data relevant to the applicable criteria of the Act that will assist the Commission in determining whether or not the proposed mail classification schedule or proposed changes therein are in accordance with the policies and the applicable criteria of the Act;

(4) To the extent that the proposed mail classification schedule or proposed

changes therein involve a change in rates or fees, such studies, information and data relevant to the criteria established by section 3622 of the Act as will assist the Commission in determining whether or not the proposed rates or charges for postal service are in accordance with such criteria; and

(5) To the extent that the proposed mail classification schedule or proposed changes therein involve changes in rates or fees which significantly increases the Postal Service's total revenues from rates and fees, such portion of the information and data and statement of reasons and basis specified for a formal request for a recommended decision for proposed changes in rates or fees in § 3001.54 as is necessary and appropriate to support and justify the proposed revenue increase.

§ 3001.65 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the parties permitted to intervene as provided in § 3001.12.

Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services.

§ 3001.71 Applicability.

The rules in this subpart govern the procedure with regard to proposals of the Postal Service pursuant to Section 3661 of the Act requesting from the Commission an advisory opinion on changes in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart.

§ 3001.72 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.74. Such request shall be filed not less than 90 days in advance of the date on which the Postal Service proposes to make effective the change in the nature of postal services involved.

§ 3001.73 Filing of prepared direct testimony.

Simultaneously with the filing of a formal request for an advisory opinion under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the

Commission to establish that the proposed change in the nature of postal services is in accordance with and conforms to the policies of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

§ 3001.74 Contents of formal requests.

(a) *General requirements.* Each formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate to fully inform the Commission and the parties of the nature, scope, significance and impact of the proposed change in the nature of postal services and to show that such change in the nature of postal service is in accordance with and conforms to the policies established under the Act. Detailed data and information and statements of reasons or basis set forth in the Postal Service's prepared direct evidence may be relied upon for purposes of the formal request without restatement therein by reference in the request to the portions of the prepared direct evidence relied upon.

(b) *Specific information.* Subject to the right of the Commission to request additional information, each formal request shall include the following:

(1) A detailed statement of the present nature of the postal services proposed to be changed and the change proposed;

(2) The proposed effective date for the proposed change in the nature of postal services;

(3) A full and complete statement of the reasons and basis for the Postal Service's determination that the proposed change in the nature of postal services is in accordance with and conforms to the policies of the Act.

§ 3001.75 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission in a proceeding under this subpart, the Postal Service shall serve copies of its formal request for an advisory opinion and its prepared direct evidence upon such officer and the parties permitted to intervene as provided by § 3001.12.

Subpart E—Rules Applicable to Rate and Service Complaints

§ 3001.81 Applicability.

The rules in this subpart govern the procedure with regard to rate and service complaints filed under section 3662 of the Act. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on such complaints.

§ 3001.82 Scope and nature of complaints.

Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in

the Act, or who believe that they are not receiving postal service in accordance with the policies of such title, may file and serve a written complaint with the Commission in the form and manner required by §§ 3001.9 to 3001.12. The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Act; thus, complaints raising a question as to whether the Postal Service has properly applied its existing rates and fees or mail classification schedule to a particular mail user or with regard to an individual, localized, or temporary service issue not on a substantially nationwide basis shall generally not be considered as properly raising a matter of policy to be considered by the Commission. The Commission shall, in the exercise of its discretion, decline to entertain a complaint during the period the complainant is continuing to pursue the general subject matter of the complaint before a hearing examiner or the judicial officer of the Postal Service.

§ 3001.83 Contents of complaints.

Subject to the right of the Commission to require the furnishing of additional information, each complaint shall include the following information:

(a) The full name and address of the complainant(s):

(b) A full and complete statement of the grounds for such complaint, including specific reference to the postal rates or services involved and the policies to which it is claimed they do not conform;

(c) A list or description of all persons or classes of persons known or believed to be similarly affected by the rates or services involved in the complaint;

(d) A statement of the specific relief or redress requested;

(e) Copies of all correspondence or written communications between the complainant, his agent, representative, or attorney, and the Postal Service or any officer, employee or instrumentality thereof, and which relates to the subject matter of the complaint; provided, however, that any such documents which are a part of a public file in any proceeding before a hearing examiner or the Judicial Officer of the Postal Service need not be included if the complaint states the title, docket reference, nature, current status, and disposition of such proceeding.

§ 3001.84 Answers by the Postal Service.

Within 30 days after the filing of a complaint, with the Commission the Postal Service shall file and serve an answer in the form and manner required by §§ 3001.9 to 3001.12. Such answer shall include the following:

(a) Specific admission, denial or explanation of each fact alleged in the complaint or, if the Postal Service is without knowledge thereof, a statement to that effect. Each fact alleged in a complaint not thus specifically answered shall be deemed to have been admitted;

(b) A statement as to the position of the Postal Service on the allegations in the complaint that the rates or service involved are not in accord with the policies of the Act, and the facts and reasons in support of such position;

(c) The position of the Postal Service on the specific relief or redress requested by the complainant, the disposition of the complaint recommended by the Postal Service, including whether or not a hearing should be held, and a statement of any facts and reasons in support of such position.

§ 3001.85 Informal procedures.

It shall be the general policy and practice of the Commission to encourage the resolution and settlement of complaints by informal procedures, including correspondence, conferences between the parties, and the conduct of proceedings off the record with the consent of the parties.

§ 3001.86 Proceedings on the record.

If a complaint is not resolved or settled under informal procedures, the Commission shall consider whether or not, in its discretion, a proceeding on the record with an opportunity for hearing should be held on such complaint. If the Commission has reason to believe that the complaint may be justified and that a hearing may otherwise be appropriate in the exercise of its discretion, the Commission shall issue a notice of proceeding pursuant to § 3001.17, and further formal proceedings shall then be held as appropriate under the Commission's rules in Subpart A of this part.

§ 3001.87 Commission determinations.

If the Commission determines, after the completion of proceedings which provide an opportunity for hearing, that a complaint is justified in whole or in part, the Commission shall issue a recommended decision to the Postal Service if the complaint involves a matter of rates and fees or mail classification and shall render a public report if the complaint involves other matters. The Commission shall notify the complainant, the Postal Service, and any other parties in each complaint proceeding of the action taken or the final disposition of the complaint.

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